



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO:
ATTENTION OF:

PERMITTEE: NEC Transit William, LLC

PERMIT NUMBER: 2000-00325(3)

EFFECTIVE DATE: January 22, 2003

NOTE: The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. (and continue on page 5)

PROJECT DESCRIPTION: NEC TRANSIT WILLIAM, LLC, 6495 TRANSIT ROAD, BOWMANVILLE, NY 14026, IS HEREBY AUTHORIZED BY THE SECRETARY OF THE ARMY TO: IMPACT 7.54 ACRES OF FEDERAL WETLAND FOR THE CONSTRUCTION OF A RETAIL CENTER, KNOWN AS THE GATEWAY CENTRE, IN ACCORDANCE WITH THE GENERAL AND SPECIAL CONDITIONS, AND THE PLANS AND DRAWINGS AND ANY ADDITIONAL SPECIAL CONDITIONS ATTACHED HERETO WHICH ARE INCORPORATED IN AND MADE A PART OF THIS PERMIT.

PROJECT LOCATION: THE PROJECT IS LOCATED IN WETLANDS ASSOCIATED WITH AN UNNAMED TRIBUTARY TO CAYUGA CREEK, AT THE NORTHEAST CORNER OF TRANSIT ROAD AND WILLIAM STREET, TOWN OF LANCASTER, ERIE COUNTY, NEW YORK.

PERMIT CONDITIONS

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on January 22, 2006. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or

from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

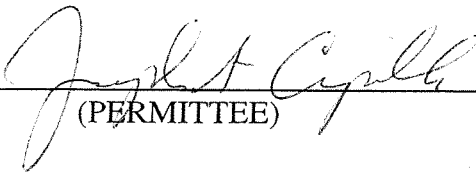
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.




(PERMITTEE)

1/15/03

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



Jeffrey M. Hall, Lieutenant Colonel, U.S. Army
(DISTRICT COMMANDER)

January 22, 2003

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

SPECIAL CONDITIONS:

1. That as mitigation, in part, for the permanent impact to 7.54 acres of federal wetland you shall fund the restoration of 12 acres of wet meadow/shallow emergent marsh wetland at the **Tonawanda Wildlife Management Area (TWMA)** (See Sheets 9 & 10 of 16) through Ducks Unlimited (DU).

(a) A copy of the **final agreement** between DU and NEC Transit William, LLC shall be received by this office prior to the discharge of fill material into any waters of the US.

(b) The **final agreement** shall be incorporated in and made part of this permit, and shall contain provisions for items c-f below.

(c) Verification from DU of the transfer of funds shall be received by this office prior to the discharge of fill material into any waters of the US.

(d) That DU shall submit, to this office within 60 days of transfer of funds, detailed final project plans including but not limited to: proposed dike, proposed wetland boundary, seeding plan and water control structure. The plans shall be incorporated in and made part of this permit.

(e) That the post construction report shall be submitted to the Corps by DU within 60 days after construction of the **TWMA restoration area** is complete. Post-construction and monitoring reports shall be prepared and submitted as outlined in the final agreement. Copies of the monitoring reports shall also be forwarded to the U.S. Environmental Protection Agency (USEPA) and U.S. Fish and Wildlife Service (USFWS).

(f) The mitigation restoration area will be considered successful if:

i. The mitigation areas generally comply to the plans referenced in 1(d) above.

ii. The mitigation area is vegetated by 85% aerial plant cover of desirable facultative or wetter plant species. If DU fails to achieve and maintain the 85% desirable cover threshold, DU shall be required to undertake measures to achieve 85% desirable cover during the following year. These measures may include but are not limited to regrading areas and seeding or planting.

iii. DU shall control nuisance vegetation, such as purple loosestrife (Lythrum salicaria) and common reed (Phragmites australis), should it appear within the **TWMA Mitigation Area**. Controls shall be warranted if undesirable species within the mitigation area exceed by more than 5% (aerial coverage) the aerial

coverage present in adjacent undisturbed wetlands.

iv. Hydrology is maintained throughout the entire mitigation area which results in the appropriate wetland vegetation as described above in 1(f)(ii.).

2. That as mitigation for the permanent impact to 7.54 acres of federal wetland, in part, you shall create 7.14 acres of wet meadow wetland at the **Steinfeldt Mitigation Area** (See Sheet 11 of 16) and preserve in perpetuity the entire 13 acre site, including 1.61 acres of existing wetland and 4.25 acres of upland through the placement of deed restrictions and the transfer of the property to the Town of Lancaster.

(a) The mitigation work shall be done in accordance with the mitigation and monitoring plan entitled "**Proposed Wetland Mitigation Plan for Impacts Associated with the Proposed Gateway Centre**", prepared by Earth Dimensions, Inc., dated December 31, 2002 and as shown in part on the attached Sheets 11-16 of 16. The mitigation and monitoring plan is hereby incorporated in and made part of this permit.

(b) That a qualified wetland scientist shall be on-site during construction of the wetland creation area at the **Steinfeldt Mitigation Area** and shall oversee the construction to ensure the wetland is properly constructed. A copy of their qualifications shall be submitted to this office for review prior to commencement of construction.

(c) Topsoil shall be removed from the authorized wetland fill area and the mitigation area and shall be stockpiled at an upland location for subsequent use as top-dressing for the mitigation site. The mitigation area shall be excavated below final grade elevation. Soil scalped and stockpiled as described above shall be spread, to a depth of no less than 6 inches, to bring the mitigation site to final grade.

(d) That the post construction report shall be submitted to the Corps within 60 days after construction of the **Steinfeldt creation area** is complete. Post-construction and monitoring reports shall be prepared by qualified environmental specialists and submitted as outlined in the mitigation and monitoring plan. Copies of the monitoring reports shall also be forwarded to the USEPA and USFWS.

(e) The mitigation creation area will be considered successful if:

i. The mitigation areas generally comply to the plans contained in Sheets 12-14 of 16.

ii. The created wetland areas are vegetated by at least 85% aerial plant cover throughout, and will contain at least 80% of desirable facultative or wetter

plant species, with no more than 50% facultative. If you fail to achieve and maintain the desirable cover thresholds, you shall be required to undertake measures to achieve desirable cover thresholds during the following year. These measures may include but are not limited to regrading areas and seeding or planting.

iii. The permittee shall control nuisance vegetation, such as purple loosestrife (Lythrum salicaria) and common reed (Phragmites australis), should it appear

within the **Steinfeldt Mitigation Area**. Controls shall be warranted if undesirable species within the mitigation area exceed by more than 5% (aerial

coverage) the aerial coverage present in adjacent undisturbed wetlands.

iv. Hydrology is maintained throughout the entire mitigation areas which results in the appropriate wetland vegetation as described above in 2(e)(ii.).

3. That as mitigation, in part, you shall preserve 10.75 acres (4.03 acres of wetland and 6.72 acres of upland) at the **Northern Mitigation Area** (See Sheets 15 & 16 of 16) in perpetuity through the placement of deed restrictions and the transfer of the property to the Town of Lancaster.

4. Perpetual deed restrictions shall be placed on the **Northern Mitigation and Steinfeldt Mitigation** sites within 6 months of commencement of work within waters of the U.S. to guarantee their preservation for wetland and wildlife resources. The restrictions shall specifically state that the mitigation areas are not to be adversely impacted. A certified copy of the recorded deed restriction shall be provided to the Corps upon execution. The restriction shall specifically state that neither wetlands nor any upland buffer areas within the easement may be encroached upon by residential or commercial lawns.

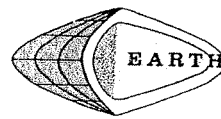
(a) The deed restrictions shall specifically state that the following activities are prohibited within the mitigation areas unless you first obtain Department of the Army authorization: no construction or placing of buildings, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, or other structures within the limits of the designated mitigation area, or removal, destruction, or cutting of vegetation, spraying with herbicides, grazing of domestic animals, or disturbance or manipulation of the mitigation areas or filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals, or other materials, nor any building of roads or change in the topography of the land in any manner excepting the maintenance of foot trails.

5. In the event that any portion of the mitigation plan is altered, all changes shall be submitted to this office for approval prior to their implementation.

6. That all components of the wetland mitigation, with the exception of Special Condition #4, shall commence simultaneously with or before any impacts to waters of the U.S. associated with the authorized project.
7. The permittee shall assume all liability for accomplishing corrective work should the District Engineer determine the compensatory mitigation to be unsuccessful. Remedial work may include regrading and/or replanting the mitigation site.
8. The permittee shall assume all responsibility for complying with all Special Conditions. If the reports required under these conditions are not submitted by the specified date, unless a time extension is approved in writing by the Corps of Engineers, the permittee shall pay stipulated penalties in the amount of \$50.00 per day for each day past the submittal date. Such funds shall be submitted by check made payable to "The Finance and Accounting Officer," and forwarded directly to the Office of Counsel, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199.
9. That at the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, you shall allow access to the project site and the mitigation parcels to determine compliance with the conditions of this permit.
10. That this permit does not authorize sidecasting or any other temporary or permanent disposal of dredged or fill material in a water of the United States including freshwater wetlands.
11. That you are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.
12. That the disposal of trees, brush and other debris in any stream corridor, wetland or surface water is prohibited.
13. That the fill material shall be free of oil and grease, debris, wood, general refuse, plaster, and other pollutants, and shall contain no broken asphalt.
14. The excavation equipment shall be thoroughly washed prior to their first use within **the project site and the Steinfeldt Mitigation Area** to preclude introduction of seeds or plant segments of noxious weeds which may be present on the equipment from a previous use.
15. That during construction at **the project site and Steinfeldt Mitigation Area** erosion control devices such as hay bales or a filter fabric fence shall be used and maintained to prevent erosion of the disturbed soil into the remaining on-site and off-site wetlands. The hay bales or filter fabric fence shall be installed in accordance with appropriate construction techniques, including placing the hay bales and filter fabric fence in a shallow trench,

backfilling the toe of the filter fabric fence and securing the hay bales with stakes.

16. All required submissions noted in the above conditions shall be sent to the attention of: Ms. Bridget Brown, USACE, Auburn Field Office, 7413 County House Road, Auburn, New York 13021, unless otherwise noted. The submissions to the USEPA shall be sent to the attention of: Mr. Mario Paula, USEPA, DEPP-WPB, 290 Broadway, 24th Floor, New York, NY 10007. The submissions to the USFWS shall be sent to the attention of: Mr. Tim Sullivan, USFWS, 3817 Luker Road, Cortland, NY 13045.



W2G94c

Northeast Corner of Transit Road & William Street

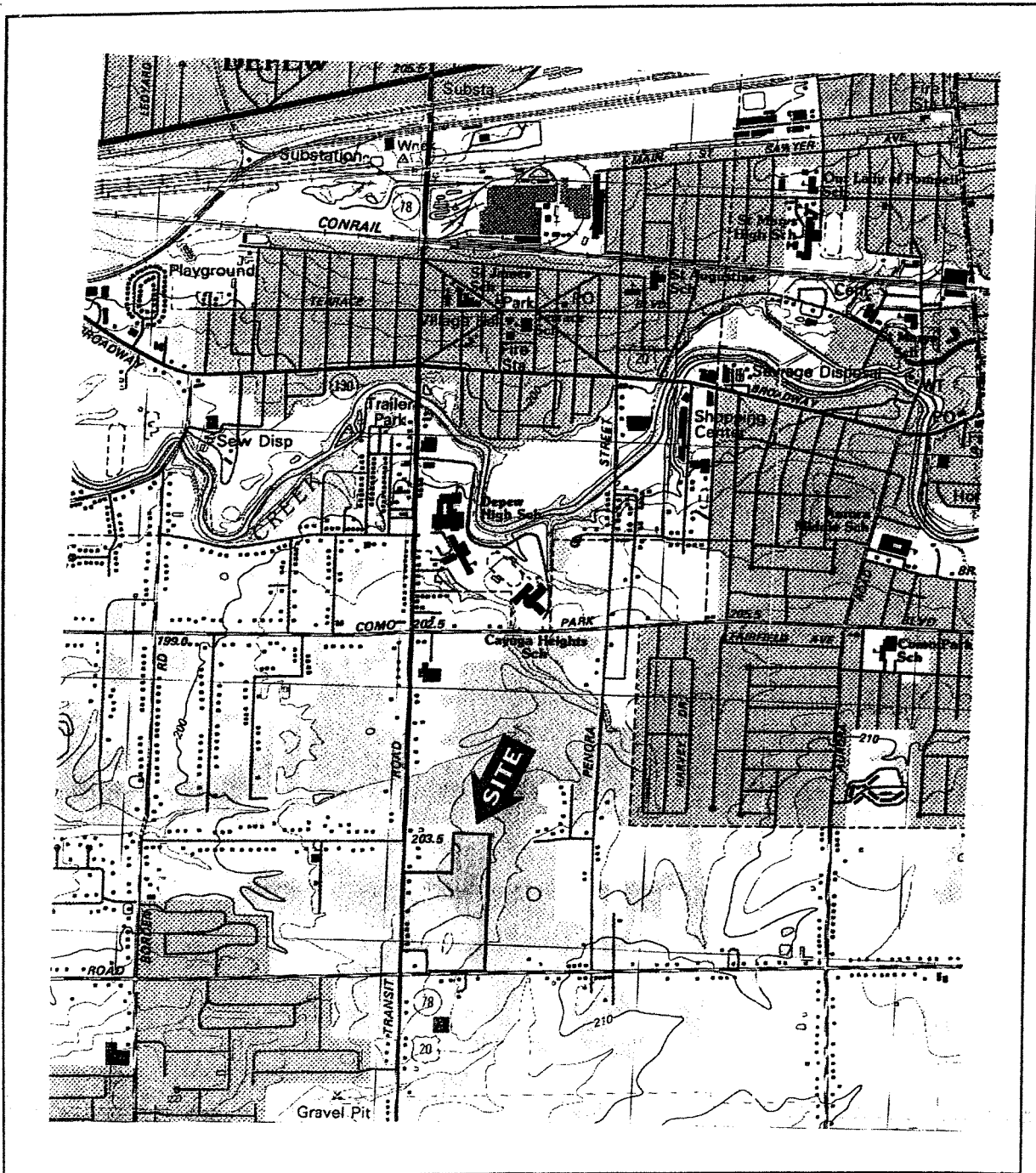


Figure 1 USGS 7.5 minute
Topographical Map
Lancaster quadrangle '82

Northeast Corner of Transit Rd
& William Street
Town of Lancaster
Erie County, New York

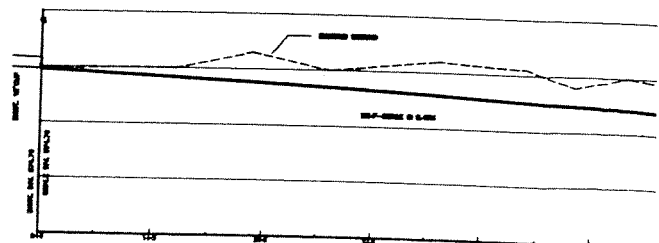
NEC TRANSIT WILLIAM, LLC
D/A Processing No. 2000-00325(3)
Erie County, New York Quad: LANCASTER
Sheet 1 of 16

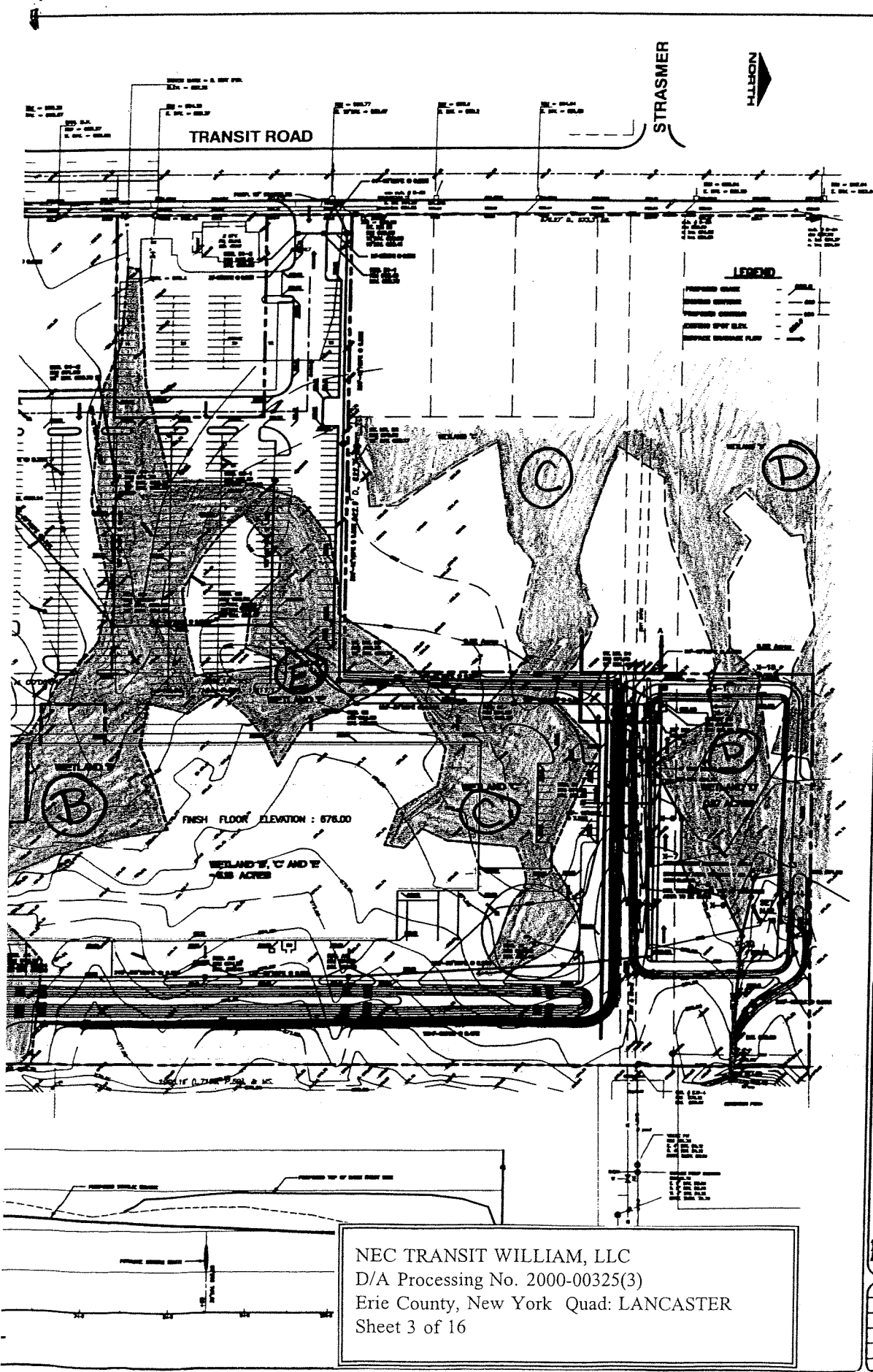
A = 1.43 acres
B-C-E* = 5.14 acres on-site
D* = 0.87 acre on-site
F = 0.10 acre
Total on-site wetlands = 7.54 acres

Boundary of Wetland D was revised on 10-14-02 and field verified by USACE on 11-13-02. All other wetland boundaries remain as verified by USACE on 6-1-00.

WILLIAM STREET

675
670
665
660





WARNING
 UNAUTHORIZED ALTERATION OR
 ADDITION TO THIS PLAN
 IS A VIOLATION OF THE
 PROFESSIONAL SEAL AND
 STATE ENGINEER LAW

Date	Revised	By	Check
1/1/00			
1/1/00			
1/1/00			
1/1/00			
1/1/00			
1/1/00			
1/1/00			
1/1/00			
1/1/00			
1/1/00			

William H. Gammeter, P.E.
 1111 Locust St. 10001

GENESEE
 Engineering Planning Surveying P.C.
 4545 Genesee Street
 Cheektowatch, New York 14225
 Phone/Fax: 716-995-9416
 w@geneesengr.com

THE BELLAVISTA GROUP, INC.
 BUILDERS & DEVELOPERS & FINANCERS
 6408 TRANSIT ROAD • BOWMANVILLE NY 14028
 PHONE: 716-664-9000 • FAX: 716-664-9008
 WWW.BELLAVISTAGROUP.COM

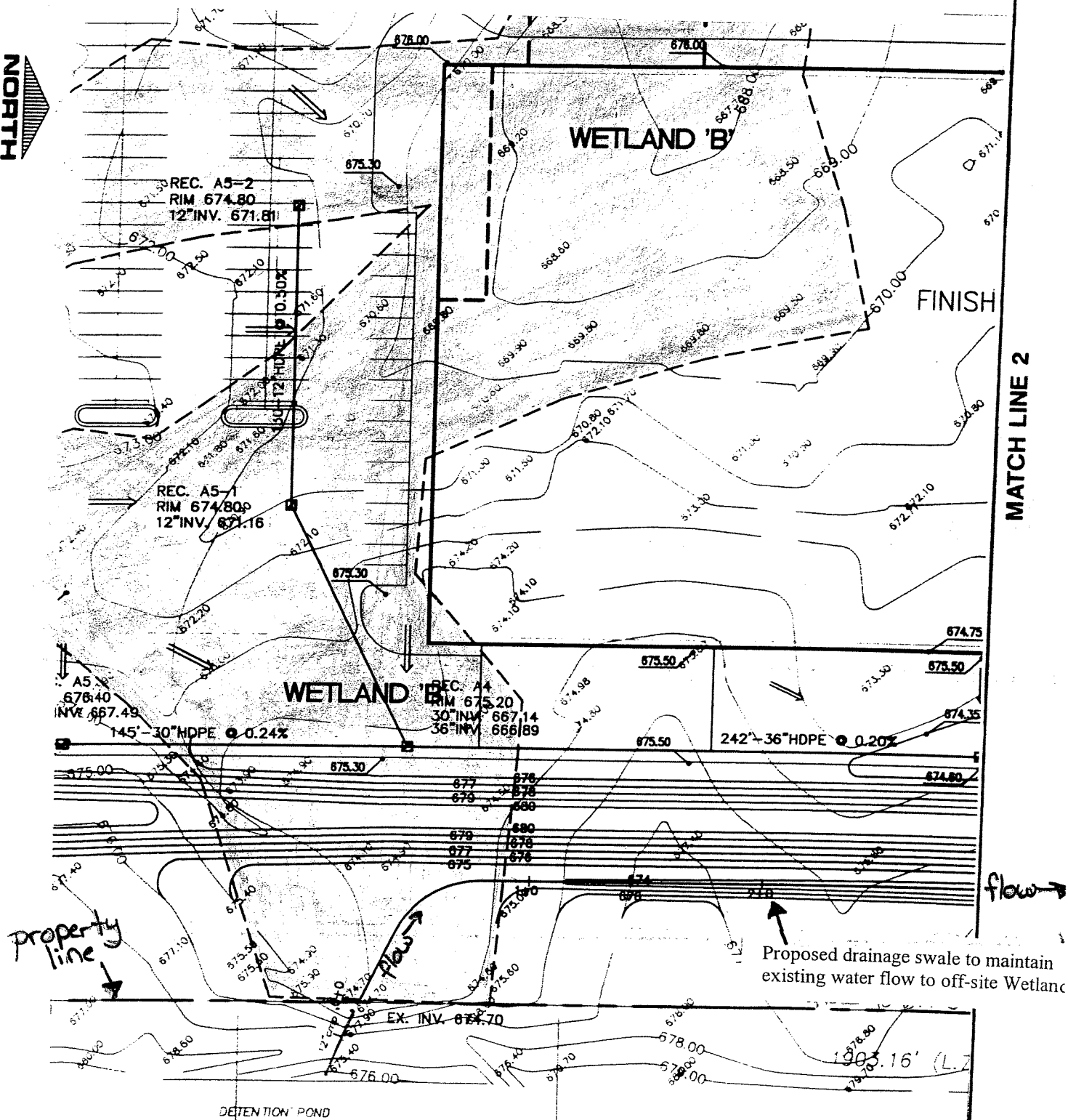
Proposed Retail Development
 The Gateway Centre
 Transit Road
 Lancaster, New York

Date	Revised	By	Check
1/1/00			
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NEC TRANSIT WILLIAM, LLC
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 Erie County, New York Quad: LANCASTER
 Sheet 3 of 16

EXISTING TOPOGRAPHY WITH STORM SEWER PLAN

DETAIL DRAWING OF PROPOSED DRAINAGE SWALE TO MAINTAIN EXISTING WATER FLOW TO OFF-SITE WETLANDS (1 OF 3)



Date	Revision
8/4/02	Stake
9/9/02	Add Swale Contours
10/17/02	Revise Swale Contours
10/18/02	Add Sections
11/17/02	Revise Swale Contours, Add Wetlands

Project:

NEC TRANSIT WILLIAM, LLC
D/A Processing No. 2000-00325(3)
Erie County, New York Quad: LANCASTER
Sheet 4 of 16

EXISTING TOPOGRAPHY WITH STORM SEWER PLAN

Drawn: pn/cn Sheet:

Checked: WMS

Date: 7/30/02

Scale: 1"=60'

Project No: 02-0263

File: N/A

DETAIL DRAWING OF PROPOSED DRAINAGE SWALE TO MAINTAIN EXISTING WATER FLOW TO OFF-SITE WETLANDS (2 OF 3)



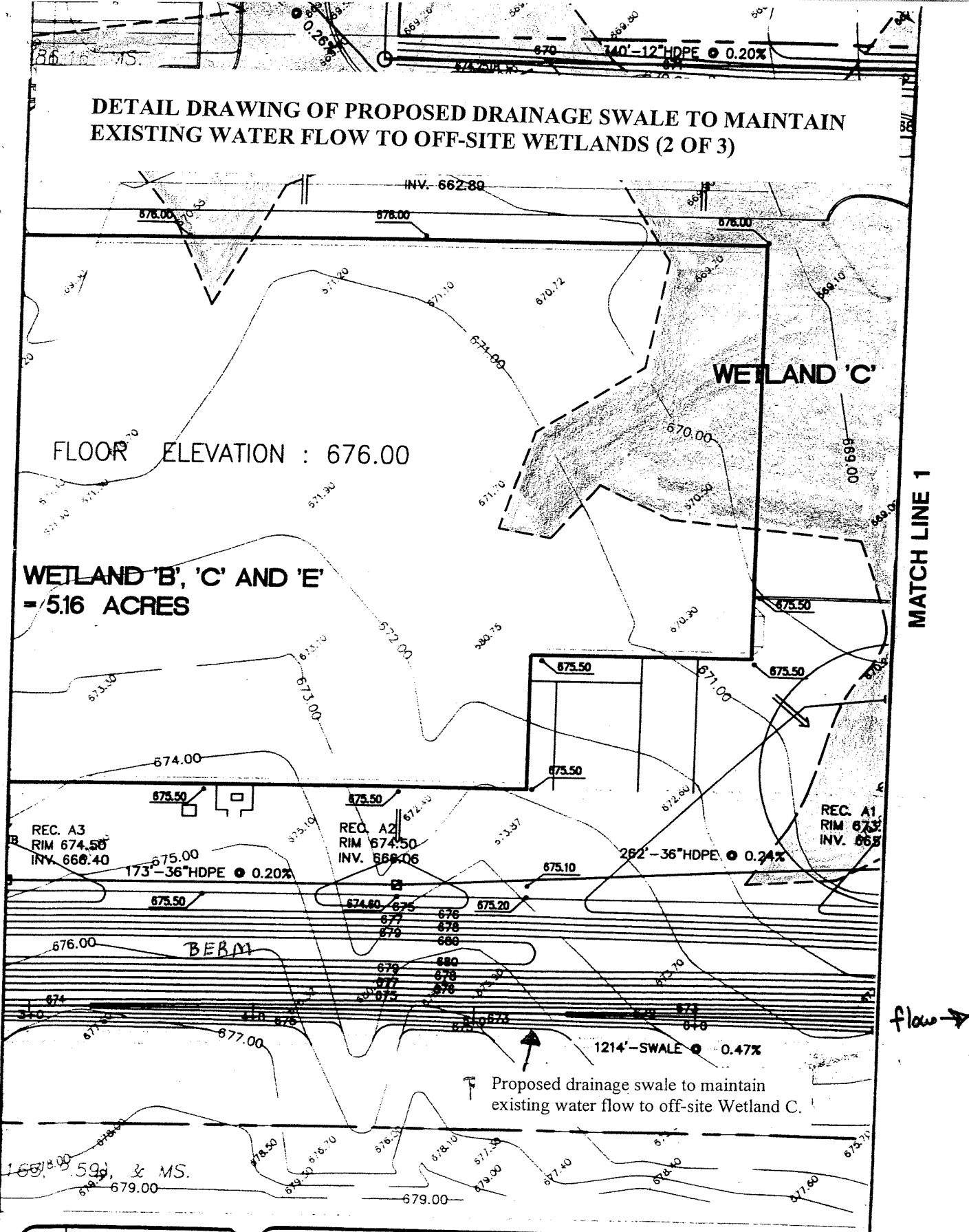
MATCH LINE 2

MATCH LINE 1

FLOOR ELEVATION : 676.00

WETLAND 'B', 'C' AND 'E'
= 5.16 ACRES

WETLAND 'C'



Date	Revision
8/4/02	Scale
8/9/02	Add Swale Contours
10/17/02	Revise Swale Contours
10/18/02	Add Sections
11/17/02	Revise Swale Contours, Add Wetlands

Project:

NEC TRANSIT WILLIAM, LLC
D/A Processing No. 2000-00325(3)
Erie County, New York Quad: LANCASTER
Sheet 5 of 16

EXISTING TOPOGRAPHY WITH STORM SEWER PLAN

Drawn: pn/cn Sheet:

Checked: WMS

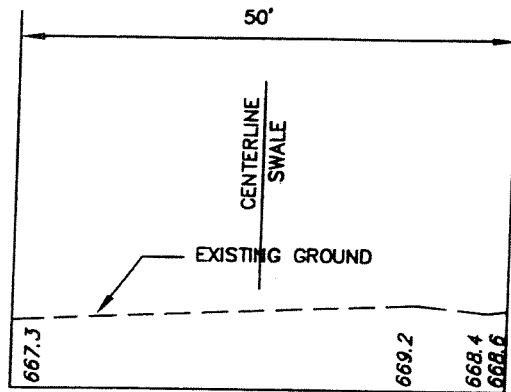
Date: 7/30/02

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Project No: 02-0263

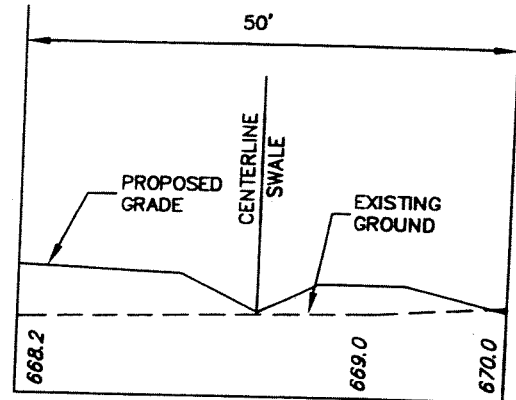
File: N/A

Sectional View of Proposed Drainage Swale



SECTION A - A

SCALE: 1" = 20'



SECTION B - B

SCALE: 1" = 20'

Proposed drainage swale is designed to maintain existing water flow from the off-site detention pond, located east of the project site, to off-site Wetland C, located west of the project site. The drainage swale will end at the western property line to the north of the Wetland C boundary. However, natural grade contours will direct water flow to the wetland. No additional drainage will flow to the adjacent property. The proposed drainage swale will only ensure the hydrology of the existing off-site wetland is not affected by maintaining pre-project water flow.

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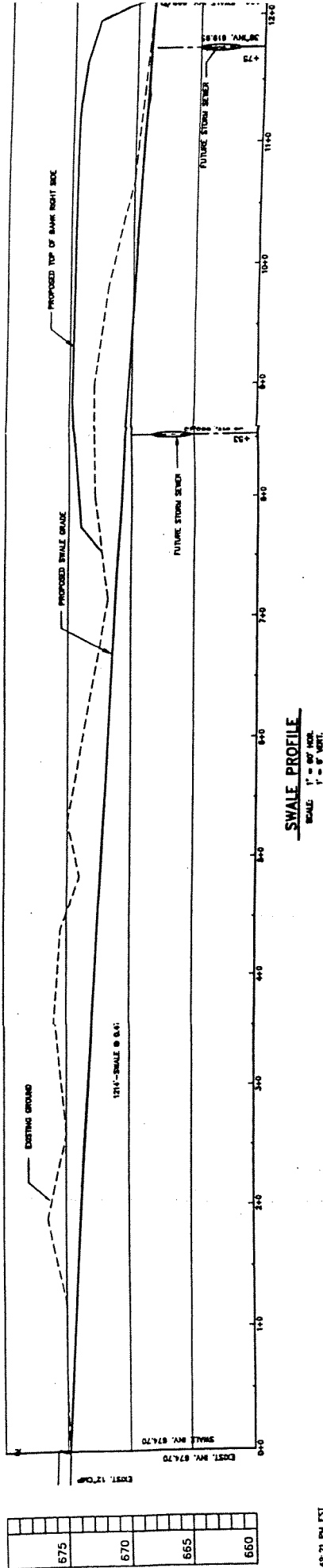
Date	Revision
9/4/02	Seals
9/9/02	Add Seale Contours
10/17/02	Revise Seale Contours
10/18/02	Add Sections
11/17/02	Revise Seale Contours, Add Wetlands

Project:
**Proposed Retail Development
The Gateway Centre
Transit Road
Lancaster, New York**

EXISTING TOPOGRAPHY WITH STORM SEWER PLAN

Drawn: pn/cn	Sheet:
Checked: WMS	
Date: 7/30/02	
Scale: 1" = 60'	
Project No: 02-0283	
File: N/A	

Profile View of Proposed Drainage Swale



7/2002 03:49:21 PM EST

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Ducks Unlimited Mitigation Parcel

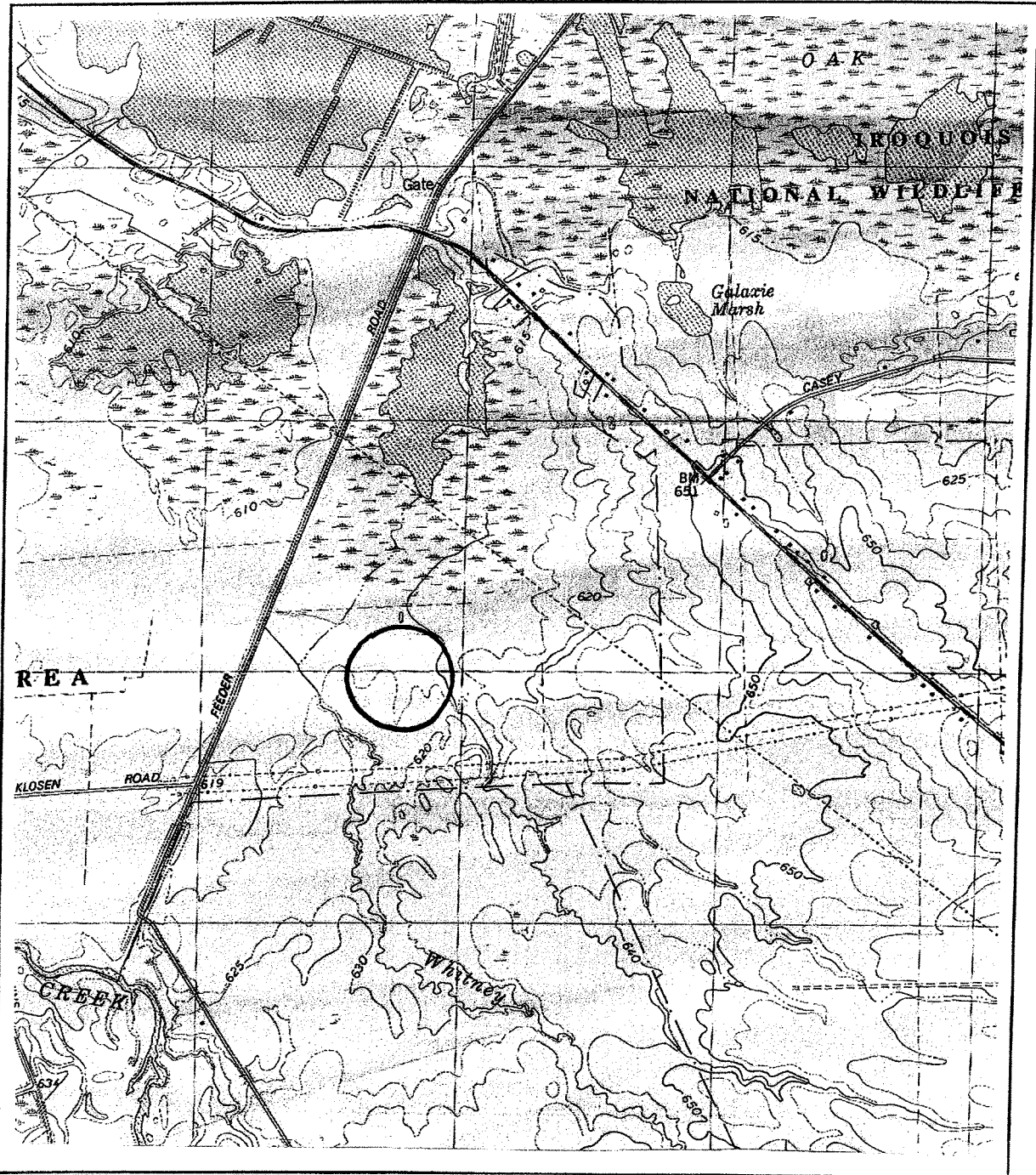


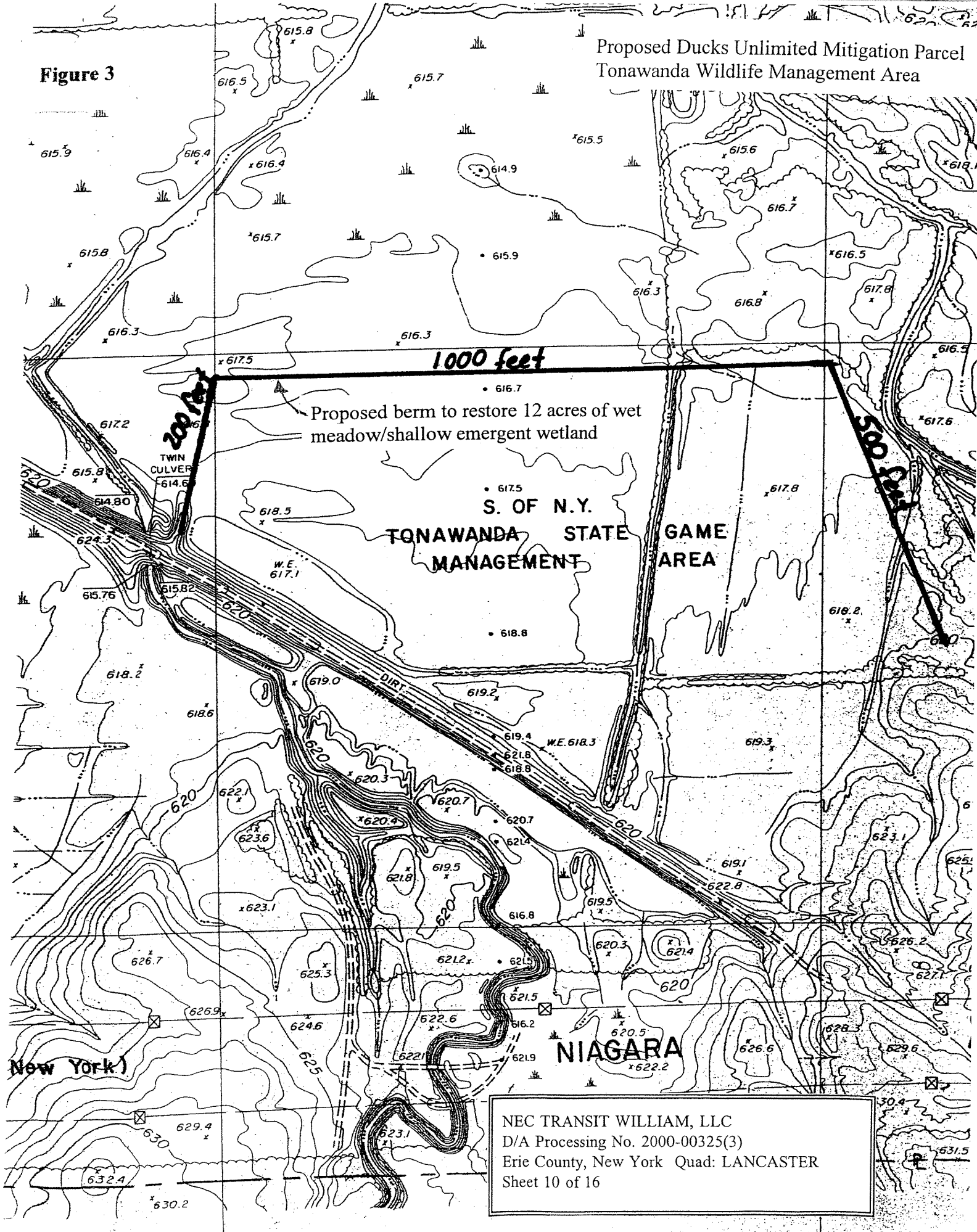
Figure 1 USGS 7.5 minute
Topographical Map
Akron Quadrangle 1981

Proposed Ducks Unlimited Mitigation Parcel
Town of Alabama
Genesee County, New York

NEC TRANSIT WILLIAM, LLC
D/A Processing No. 2000-00325(3)
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Figure 3

Proposed Ducks Unlimited Mitigation Parcel Tonawanda Wildlife Management Area



W2G94c

Transit & William Wetland Mitigation, Steinfeldt Road Parcel

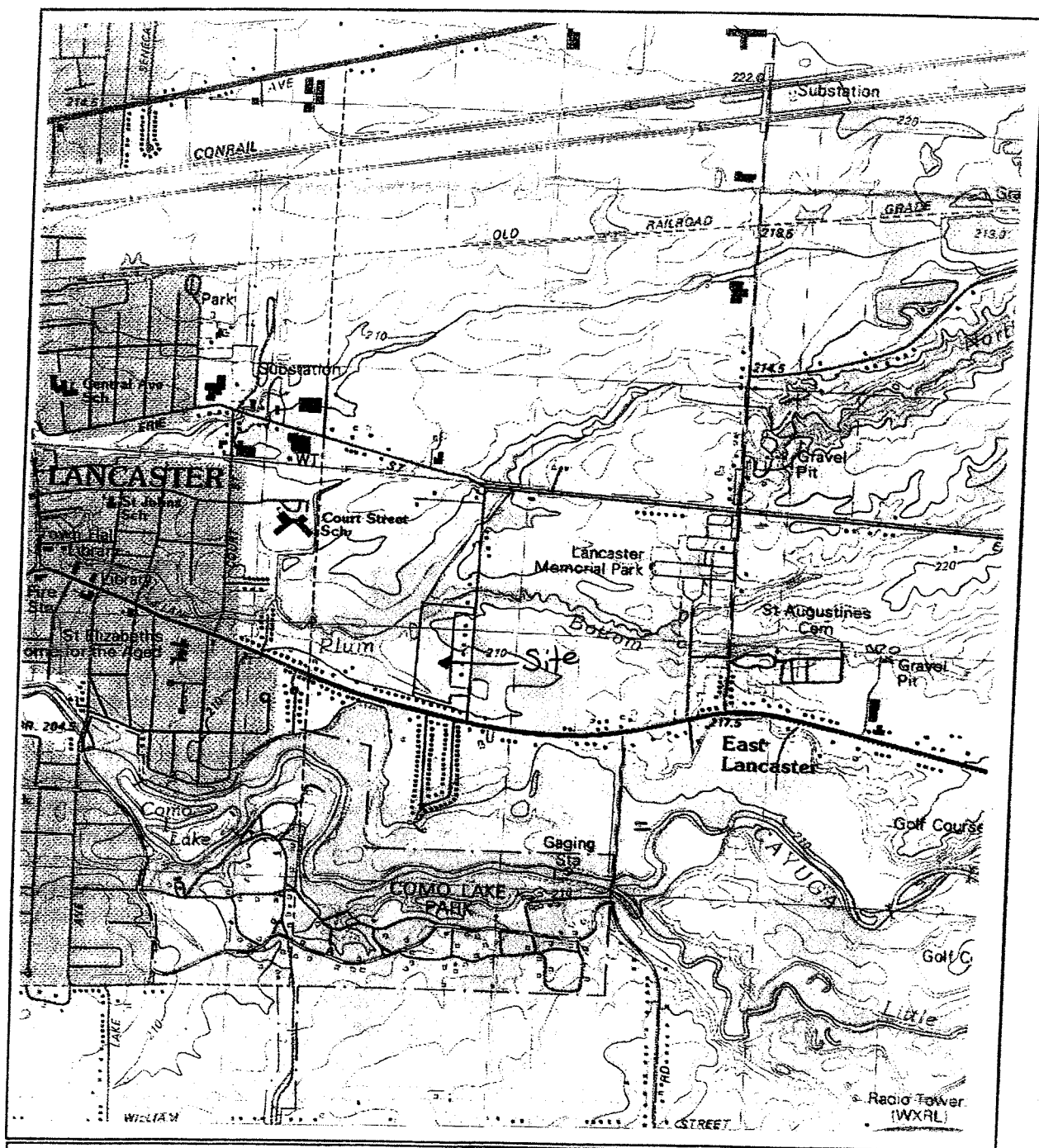


Figure 1 USGS 7.5 Minute
Topographical Map
Lancaster Quadrangle/1982

Steinfeldt Road Parcel
Town of Lancaster
Erie County, New York








NEC TRANSIT WILLIAM, LLC
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Sheet 11 of 16

The Gateway Centre Wetland Mitigation Project

Steinfeldt Mitigation Parcel
northwest corner of Broadway & Steinfeldt

Total Wetland Creation Area= 7.14±acres
Total Upland Preservation Area= 4.25±acres
Total Existing Wetland Preservation Area= 1.61±acre
Total Site Area= 13.0±acres

LEGEND

-  bore hole location
-  wetland to be created
-  existing wetland
-  proposed shrub planting
-  tree line
-  A-A' cross-section location
-  photo location

5' below existing elevation
12' below existing elevation
15' below existing elevation
including 5' reseeded topsoil

Photo 2

Existing Wetland

~1.46 acres

site access

Upland Forest

B

MW 4-02

max depth 12"

Wetland Cell 1

2.02 +/- acres

shrub plantings

10' Upland Field Buffer

A

MW 3-02

A'

N

Wetland Cell 2

3.65 +/- acres

MW 2-02

photo 3

photo 4

photo 5

10' Upland Field Buffer

MW 1-02

Wetland Cell 3

1.47 +/- acre

Photo 1

site access

Existing Wetland

B'

~0.15 acres

Steinfeldt Road

W2G

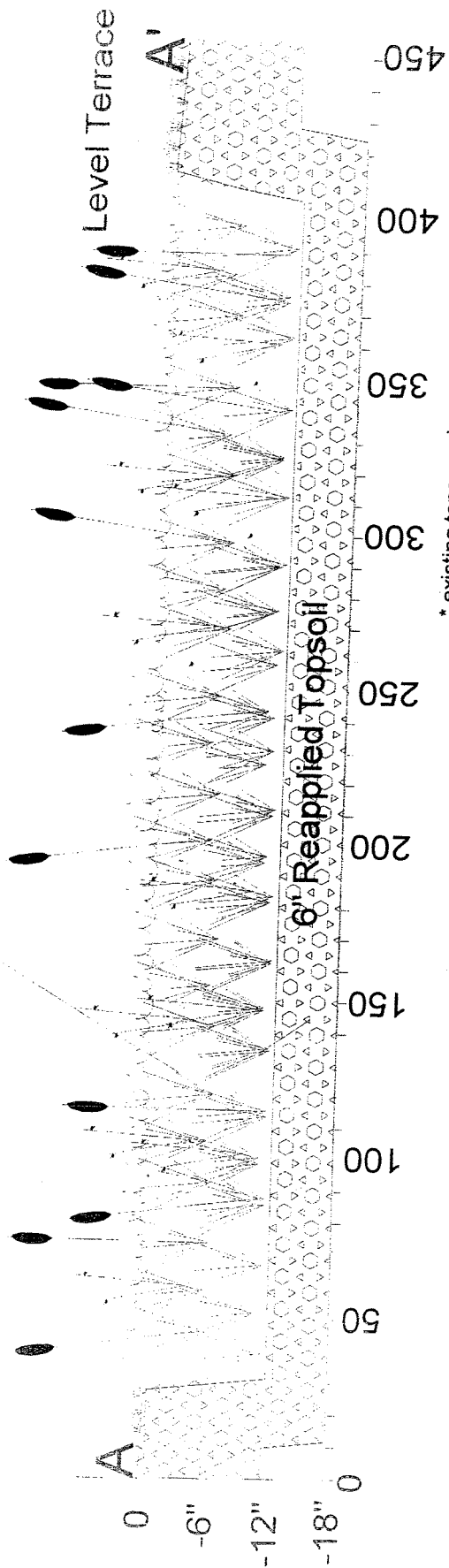
NEC TRANSIT WILLIAM, LLC
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Erie County, New York Quad: LANCASTER
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Mitigation Overview Drawing

4C
NEC TRANSIT WILLIAM, LLC
D/A Processing No. 2000-00325(3)
Erie County, New York Quad: LANCASTER
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Steinfeldt Mitigation Cross-Section

12" Estimated Water Depth*

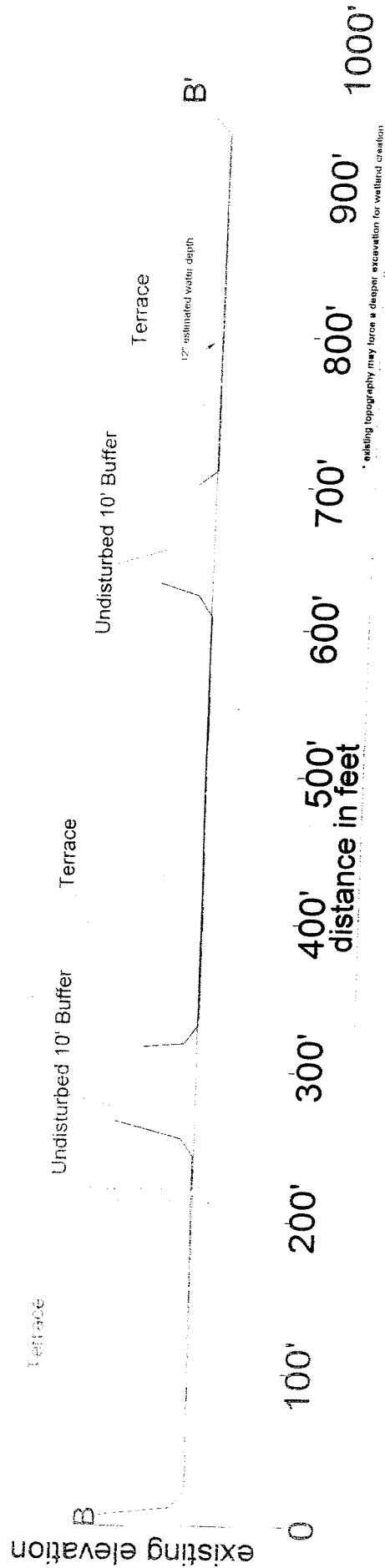


* existing topography may force a deeper excavation for wetland creation

W2G94c

Steinfeldt Mitigation Cross Section

NEC TRANSIT WILLIAM, LLC
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Erie County, New York Quad: LANCASTER
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* existing topography may force a deeper excavation for wetland creation

W2G94d

NEC Northern Mitigation Site

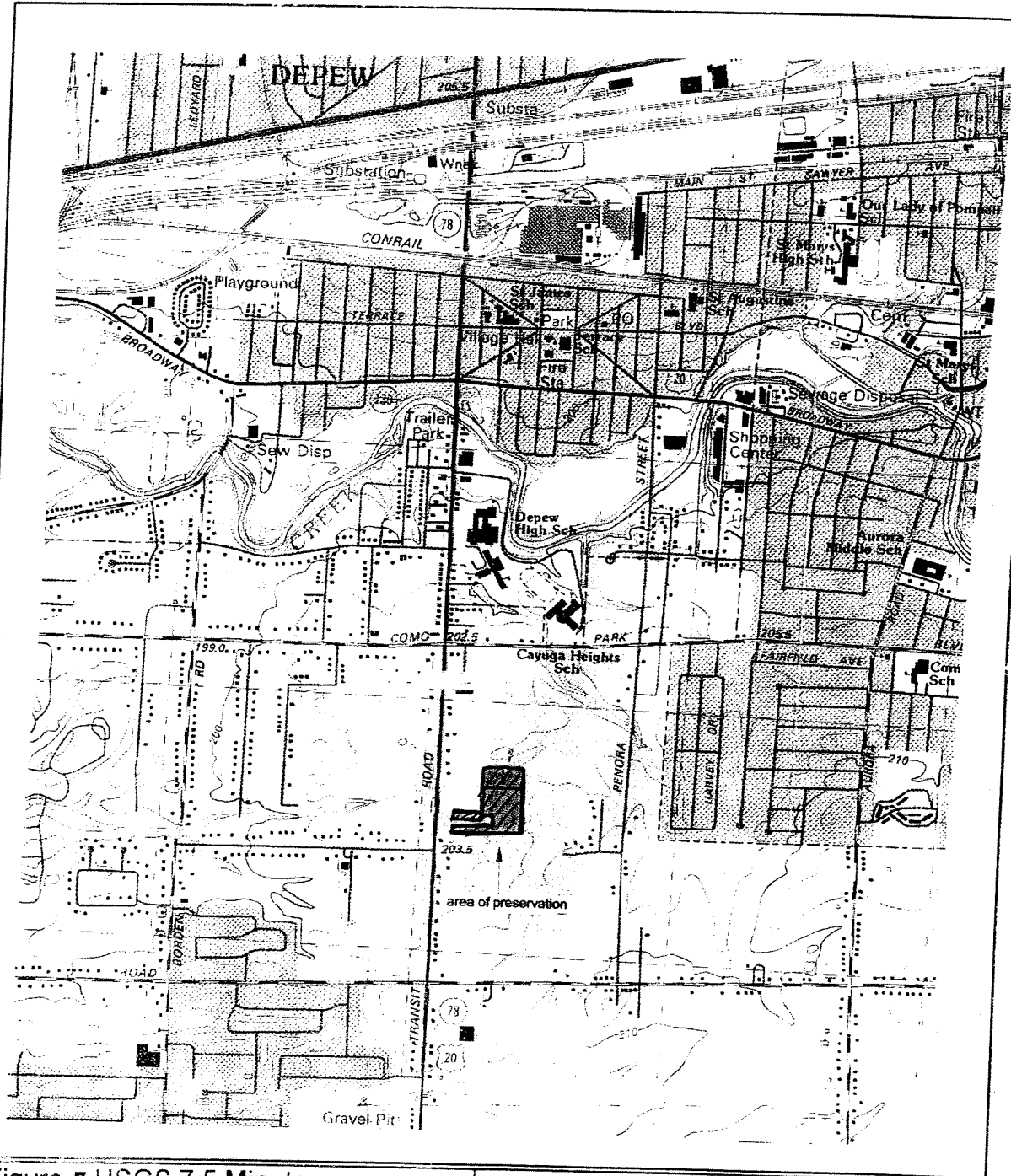


Figure 7 USGS 7.5 Minute
Topographical Map
Lancaster Quadrangle
1982

NEC Northern Mitigation Site
Town of Lancaster
Erie County, New York

NEC TRANSIT WILLIAM, LLC
D/A Processing No. 2000-00325(3)
Erie County, New York Quad: LANCASTER
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NEC TRANSIT WILLIAM, LLC
D/A Processing No. 2000-00325(3)
Erie County, New York Quad: LANCASTER
Sheet 16 of 16

BY EDI: JMC, December 10th, 2002

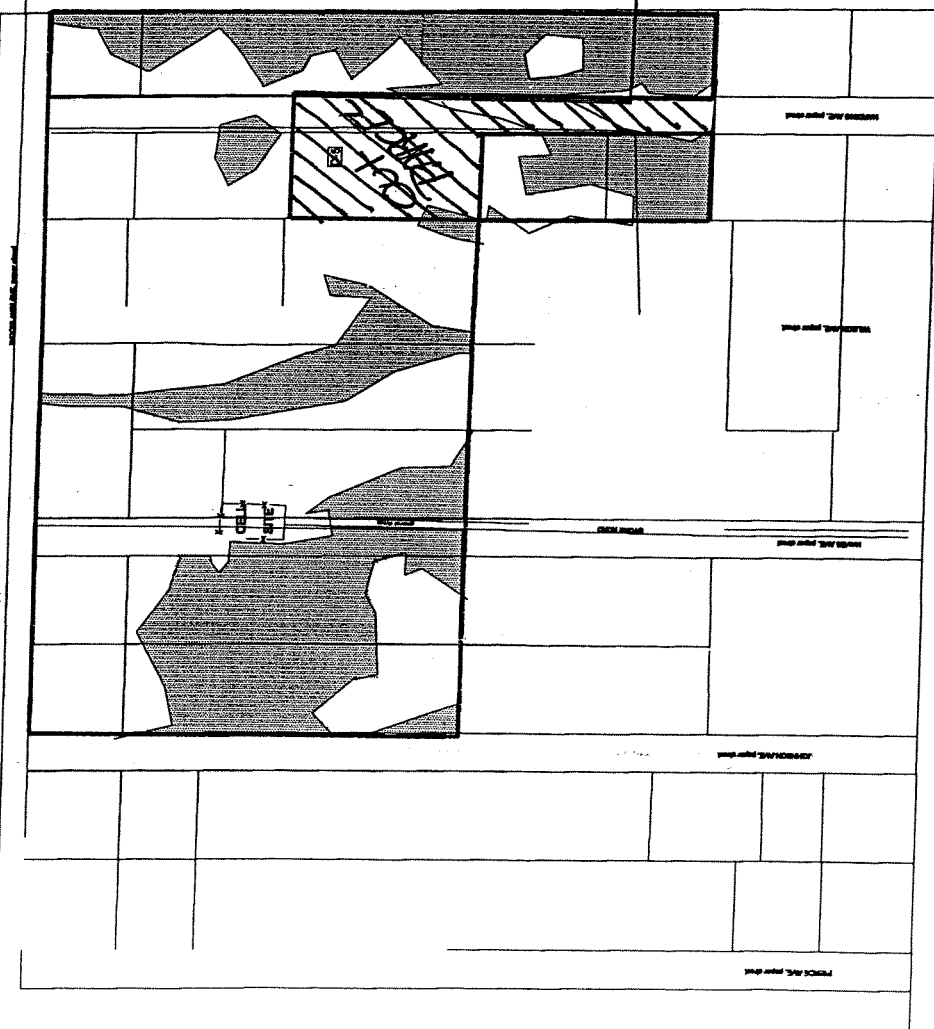
Attachment 1- Northern Mitigation Area N.E.C. NORTHERN PRESERVATION SITE

Near Intersection of Transit & William
TOWN OF LANCASTER, COUNTY OF ERIE, STATE OF NEW YORK

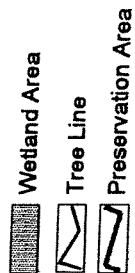
W2G94d



WOODLAND AVE. right-hand



LEGEND



Total Wetland Area
Within Preservation Area
= 4.035± acres

Total Area
of Preservation
= 10.75± acres

TRANSIT ROAD

STRASMER

REVISIONS

NO.	DATE	DESCRIPTION
1	12-04-01	REVISED FOR COMMENTS FROM THE TOWN OF LANCASTER
2	12-04-01	REVISED FOR COMMENTS FROM THE TOWN OF LANCASTER

DESIGNED BY:

DRAWN BY: J.M.

CHECKED BY:

PROJ. ENGR.

URS Corporation
Group Consultants

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